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MONTANA LEGISLATIVE HISTORY

Chapter 402 1983

Bill H _____ S 138 Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 21	✓ C	Hearing Date(s)	Feb 03	✓ C
	Mar 22	✓ C		Feb 09	✓ C
		____C			____C
		____C			____C
Date Out		____C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

2ND READING: 02/05/83 AYES: 47; NAYS: 0
3RD READING: 02/08/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/8/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/09/83
HEARING: 3/3/83
REPORT: 03/19/83, BE CONCURRED IN
2ND READING: 03/22/83, BE CONCURRED IN AYES: 81; NAYS: 5
3RD READING: 03/23/83, BE CONCURRED IN AYES: 84; NAYS: 10

RETURNED TO SENATE: 3/23/83

TRANSMITTED TO GOVERNOR: 03/30/83
SIGNED: 4/2/83, CHAPTER 321

SB 138 -- MAZUREK -- TO GENERALLY REVISE MONTANA'S CODIFICATION OF THE UNIFORM COMMERCIAL CODE BY SUBSTANTIALLY ADOPTING THE 1972 AND 1977 CHANGES RECOMMENDED BY THE UNIFORM LAW COMMISSIONERS ....

INTRODUCED: 01/13/83
REFERRED TO COMMITTEE ON JUDICIARY: 01/13/83
HEARING: 2/3/83
REPORT: 02/09/83, DO PASS, AS AMENDED
2ND READING: 02/11/83 AYES: 50; NAYS: 0
3RD READING: 02/14/83 AYES: 49; NAYS: 0

TRANSMITTED TO HOUSE: 2/14/83
REFERRED TO COMMITTEE ON JUDICIARY: 03/01/83
HEARING: 3/21/83
REPORT: 03/22/83, BE CONCURRED IN
2ND READING: 03/22/83, BE CONCURRED IN AYES: 74; NAYS: 2
3RD READING: 03/23/83, BE CONCURRED IN AYES: 92; NAYS: 2

RETURNED TO SENATE: 3/24/83

TRANSMITTED TO GOVERNOR: 04/01/83
SIGNED: 04/06/83, CHAPTER 402

SB 139 -- MARBUT, NORMAN, MC CALLUM, ET AL. -- CHANGING THE DEFINITION OF "PRIORITY PRIMARY ROUTE" AND GIVING PREFERENCE FOR THAT DESIGNATION TO HIGHWAYS IN COUNTIES OF MORE THAN 75,000 POPULATION ....

INTRODUCED: 01/13/83
REFERRED TO COMMITTEE ON HIGHWAYS & TRANSPORTATION: 01/13/83
HEARING: 1/20/83
REPORT: 01/25/83, DO NOT PASS. REPORT ADOPTED.
BILL KILLED.

SB 140 -- STORY, MC CALLUM, CONOVER, ET AL. -- TO PROVIDE REVIEW AND APPROVAL AUTHORITY TO LOCAL GOVERNING BODIES FOR SANITATION REQUIREMENTS IN SUBDIVISIONS PROPOSED IN THEIR JURISDICTIONAL AREAS; ... AND PROVIDING AN EFFECTIVE DATE.

INTRODUCED: 01/13/83
REFERRED TO COMMITTEE ON LOCAL GOVERNMENT: 01/13/83
HEARING: 1/25/83
REPORT: 02/11/83, DO PASS, AS AMENDED
2ND READING: 02/14/83 AYES: 33; NAYS: 15

CONSIDERATION OF SENATE BILL 290: Senator Smith, sponsor, advised this bill will change the election laws in filling U.S. Senate seats. This would make the method of filling congressional vacancies consistent. He noted there should be one change in the bill. Page 2, line 4 should be corrected to read "Section 12-25-202."

There being no proponents, and no opponents, the hearing was opened to questions from the Committee.

Senator Brown expressed concern that the appointment of U.S. Senators was the customary way. Senator Smith cited the 17th Amendment of the Constitution which requires the election of U.S. Senators.

There being no further discussion, the hearing was closed.

CONSIDERATION OF SENATE BILL 138: Senator Mazurek, sponsor of the bill, presented it at the request of the State Bar. There is a need for revising Montana's Codification of the Uniform Commercial Code so as to adopt the 1972 through 1977 changes recommended by the Uniform Law Commissioners. He advised that the Committee had been briefed on the intent of the bill the previous evening.

PROPONENTS: Professor Ron Wyse of the University of Montana and the State Bar Business Section, advised that SB138 was drafted in an attempt to update the Montana version of the Uniform Commercial Code so as to reflect the changes made in 1972 through 1977. Investment securities were largely affected by these updates.

There are three non-uniform changes in the bill. Section 5 deals with rules pertaining to sale of goods. The amendment proposed here includes "or different" terms are to be construed as proposals. Section 76(8) provides that the Secretary of State will establish fees for filing documents. Section 68 affects 9-307 by dealing with the rights of the buyer in the ordinary course of business. This section was designed to protect the customer. It also incorporates the protection of good faith buyers who buy farm products.

Alan Robertson, legal counsel for the Secretary of State's Office and Vice Chairman of the Business Law Section of the State Bar of Montana, advised that the Secretary of State's Office does not have a vested interest in the filing fee rules section and explained how the provision would affect local governments. He went on to advise that if the legislature did not wish to adopt this provision and wanted to go back to the statutory fee, it should determine if the $2 fee now charged by the state is adequate. He said the legislature should also consider letting each county set the fee for county filings.

Michael Zimmerman, Secretary-Treasurer for the Business Law Section, supported the bill and specifically brought attention to page 72, line 9 which makes it easier to transfer certificated securities.

OPPONENTS: Bill Romine, representing the Clerks and Recorders' Association, advised that his only objection was the question of a fee schedule being used for filing. He also questioned if the Secretary of State's Office would set different fees in different counties and could foresee an administrative problem with what kinds of documents the Secretary's Office will ask for. He was also concerned with whether the fee will go back to the individual county and wondered what the intent was for doing this. He stated an alternative idea would be to let the county commissioners set the fees. He also wanted the Committee to make note that page 145 of the bills sets out the fee-by-rule and if this were changed other sections which refer back to this section should change their language accordingly. He felt the non-standard provision should be taken out.

There being no further proponents or opponents, the hearing was closed.

CONSIDERATION OF SENATE BILL 321: Senator Turnage, sponsor, advised that it was drafted at the request of the Department of Natural Resources and Conservation. The intent of SB321 is to clarify the conflict between Federal Power Commission authority and state statutes.

PROPONENTS: Leo Barry, representing the Department of Natural Resources and Conservation, distributed prepared testimony to the Committee (Exhibit "B"). He advised that the leasing mechanism for hydropower facilities to cities should be broadened to encompass the Board of Natural Resources, as the cities had failed to be responsible with their leases. The Board has agreed that any revenues generated from the lease would be available for further water development use.

There being no further proponents, and no opponents, the hearing was closed and moved into executive action.

ACTION ON SENATE BILL 321: Senator Mazurek moved that SB321 DO PASS. This motion passed unanimously.

The Chairman distributed a joint resolution that he said should be introduced commending the Crimestoppers Program (Exhibit "C"). Senator Brown moved to authorize its introduction. This motion passed unanimously. The proposed joint resolution was then referred to counsel for drafting.

(This sheet to be used by those testifying on a bill.)

NAME: ALAN ROBERTSON DATE: 2/7/89

ADDRESS: St. CAPITOL

PHONE: 449-4732

REPRESENTING WHOM? SEC OF ST

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT? Yes AMEND? _____ OPPOSE? _____

COMMENTS: We don't feel strongly about the fee by rule provision. We think it makes sense so that the legislature doesn't have to deal with whether a fee should be $2 or $3. We don't think the securities situation will change regardless of whether fees are set by rule or by statute. We don't anticipate any kind of changes but that is because depends on the cost analysis.

We would not object strongly if the committee wants to change it back to fee set statute. It will take some reworking of the bill and we can't now say whether the current statutory fees are adequate.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Bill Romine DATE: 2-3-89

ADDRESS: Helena

PHONE: 442-2220

REPRESENTING WHOM? clerks & Recorders

APPEARING ON WHICH PROPOSAL: S.B. 138

DO YOU: SUPPORT? _____ AMEND? ✓ OPPOSE? _____

COMMENTS: This bill gives the Sec. of State the power to set fees for filing documents with the clerk & recorder. The Association of Clerks & Recorders opposes those provisions. The new language of the bill should be amended with the present language reinstated as follows: Page 145, Lines 8 thru 9; Page 147 Lines 15 thru 21; Page 148, Lines 8 thru 15; Page 149, Lines 21 thru 25; page 151 Lines 9 thru 13; page 152, Lines 23 thru 2

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by [illegible])

NAME: Darryl Thayer DATE: 2/3/93

ADDRESS: 1133 North Roberts Helena

PHONE: 442-1731

REPRESENTING WHOM? Lincoln County

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: W/o question having the stat
let the bar. this year Lincoln
Worked with Legislature for the new
Firearms Division and Expanding hunter safety
Courses the bar would support it the best
Both should have Lincoln or whom

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

(This sheet to be used by those testifying on a bill.)

NAME: BOB MURDO DATE: 2/3/83

ADDRESS: 203 No. EWING

PHONE: 442-1300

REPRESENTING WHOM? BUSINESS LAW SECTION OF STATE BAR OF MONTANA

APPEARING ON WHICH PROPOSAL: SB 138

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: AS CHAIRMAN OF THE BUSINESS LAW SECTION OF THE STATE BAR OF MONTANA I WOULD OFFER OUR SECTION'S SUPPORT FOR THIS MEASURE. THE BUSINESS LAW SECTION, THROUGH PROFESSOR WISE FROM THE LAW SCHOOL, HAS DRAFTED AND PRESENTED THIS BILL. WORK ON THE BILL STARTED LAST SUMMER AND HAS CONTINUED TO DATE.

THE BILL BASICALLY REVISES ARTICLE 8 & 9 OF THE UNIFORM COMMERCIAL CODE. THE REVISION WILL BRING MONTANA UP-TO-DATE IN ACCORDANCE WITH THE LATEST UNIFORM NATIONWIDE AMENDMENTS IN THE AREAS INVOLVED.

ALTHOUGH THE BILL IS LONG, THE CHANGES ARE PRIMARILY UNIFORM REVISIONS FROM THE 1972 & 1977 AMENDMENTS TO THE UNIFORM COMMERCIAL CODE.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

Representative Bergene closed by stating there is an urgent need for the passage of this bill and expressed her feelings that it provides for a reasonable amount of time for detaining a suspect.

ACTION ON HOUSE BILL 350: The Chairman announced that the Committee was now ready to consider executive action on HB350. Senator Mazurek moved HB350 BE CONCURRED IN. This motion carried unanimously.

ACTION ON SENATE BILL 138: Proposed amendments were distributed and reviewed by the Committee. Page 120 was discussed and the Committee decided Section 68 should be striken in its entirety as it was a non-uniform amendment. Senator Mazurek moved to amend the bill as above proposed. This motion passed unanimously.

The second set of amendments deleting fees set by administrative rule was then discussed. The amendments would set the existing fee in the statute. The Committee also reviewed the need to amend the code reference. It was the concensus of the Committee that the amendments as proposed were properly prepared. Senator Mazurek moved their adoption (See Exhibit "B"). This motion passed unanimously. Senator Mazurek then moved SB138 DO PASS AS AMENDED. This motion also passed unanimously.

CONSIDERATION OF HOUSE BILL 307: Representative Brand advised that he is sponsoring this bill at the request of the Department of Institutions in order to make participation in a riot in a county jail or the state prison a crime and to enable a penalty to be imposed on an offender. This law is designed to be a deterrent and to make prisons safer. There would be no fiscal impact and its passage could potentially save money if damage to property through riots is avoided.

PROPONENTS: Curt Chisholm, representing the Department of Institutions, supported this bill as it would give the state leverage over individuals and those who conspire to riot.

Hank Risley, Warden of Montana State Prison, advised that this legislation was initiated at his request. He feels it would be helpful to the prison if prisoners were held accountable for their behavior. HB307 would give them the authority to hold people involved in riots accountable for their disruptive behavior.

There being no further proponents, and no opponents, the hearing was opened to questions from the Committee.

Page 120, line 3. Strike: section in its entirety renumber subsequent section

EXHIBIT "B"
February 9, 1983

AMENDMENTS TO SB 138

1. Page 120, line 7. strike § 68 & renumber
   Following: "~~operations~~"
   Insert: "other than a person buying farm products from a person engaged in farming operations"

2. Page 143, line 14.
   Following: "filing"
   Strike: remainder of line 14 through "include" on line 15
   Insert: "shall be the following"

3. Page 143, line 17.
   Following: "form"
   Insert: " -- $2"

4. Page 143, line 18.
   Following: "form"
   Insert: " -- $2"

5. Page 143, line 20.
   Following: "form"
   Insert: " -- $2"

6. Page 143, line 22.
   Following: "form"
   Insert: " -- $2"

7. Page 143, line 25.
   Following: "form"
   Insert: " -- $3"

8. Page 144, line 2.
   Following: "form"
   Insert: " -- an additional $2"

9. Page 144, line 3.
   Following: "indexed"
   Insert: " -- $2"

10. Page 144, line 5.
    Following: "fee"
    Insert: "of $2 for"

11. Page 144.
    Following: line 6
    Insert: "(i) any of the filing and indexing in subsections (a), (b) or (d) where the collateral is equipment or rolling stock of railroads or street railways, -- $15"

12. Page 145, lines 2 ~~through 9.~~
    Strike: subsection (8) in its entirety

"B"
2-9-83

13. Page 147, line 19.
Following: "30-9-403"
Strike: "(8)"

14. Page 148, line 13.
Following: "30-9-403"
Strike: "(8)"

15. Page 149, line 24.
Following: "30-9-403"
Strike: "(8)"

16. Page 151, line 11.
Following: "30-9-403"
Strike: "(8)"

17. Page 152, line 5.
Following: "30-9-403"
Strike: "(8)"

STANDING COMMITTEE REPORT

February 9, 19 83

MR. PRESIDENT

We, your committee on Judiciary

having had under consideration Senate Bill No. 138

Mazurek

Respectfully report as follows: That Senate Bill No. 138

introduced bill, be amended as follows:

1. Page 120, line 3.
   Strike: Section 68 in its entirety.
   Renumber: subsequent sections.

2. Page 143, line 14.
   Following: "filing"
   Strike: remainder of line 14 through "include" on line 15.
   Insert: "shall be the following"

3. Page 143, line 17.
   Following: "form"
   Insert: " -- $2"

4. Page 143, line 18.
   Following: "form"
   Insert: " -- $2"

Continued on Page 2

BC PA85

STATE PUB. CO.

JEAN A. TURNAGE, Chairman.

5. Page 143, line 20.
Following: "form"
Insert: " -- $2"

6. Page 143, line 22.
Following: "form"
Insert: " -- $2"

7. Page 143, line 25.
Following: "form"
Insert: " -- $3"

8. Page 144, line 2.
Following: "form"
Insert: " -- an additional $2"

9. Page 144, line 3.
Following: "indexed"
Insert: " -- $2"

10. Page 144, line 5.
Following: "fee"
Insert: "of $2 for"

11. Page 144.
Following: line 6.
Insert: "(i) any of the filing and indexing in subsections (a), (b) or (d) where the collateral is equipment or rolling stock of railroads or street railways, -- $15"

12. Page 145, line 2.
Strike: subsection (8) in its entirety

13. Page 147, line 19.
Following: "30-9-403"
Strike: "(8)"

14. Page 148, line 13.
Following: "30-9-403"
Strike: "(8)"

15. Page 149, line 24.
Following: "30-9-403"
Strike: "(8)"

16. Page 151, line 11.
Following: "30-9-403"
Strike: "(8)"

17. Page 152, line 5.
Following: "30-9-403"
Strike: "(8)"

And, as so amended, DO PASS

JEAN A. TURNAGE, Chairman.

STATE PUB. CO.
Helena, Mont.

people have to execute the laws the way they are written and that is how this was written.

REPRESENTATIVE DAILY responded that he would agree with that, but that is the problem that people have with the judicial system; that it is wrong that they do that - it is obviously wrong.

SENATOR TOWE explained that they abolished the insanity defense in 1979; if this mental defect interferes with the ability to formulate an intent, it still may be a defense to prove all the elements of the defense.

MR. HANSER indicated that there are some real problems with the insanity defense; the way it is now it is very confusing; that he would encourage them to retain the Senate amendments, but he felt that they should have a subcommittee over the interim to study this entire issue and come up with some recommendations.

There were no further questions and the hearing on this bill was closed.

SENATOR TOWE indicated that REPRESENTATIVE ADDY will carry this bill on the floor of the House.

EXECUTIVE SESSION

SENATE BILL 381

REPRESENTATIVE KEYSER moved that they table this bill. The motion was seconded by REPRESENTATIVE SPAETH.

CHAIRMAN BROWN indicated that Senator Hager asked that they table that bill, which is the grandparent's visitation rights, pending dispostion of Representative McBride's bill, which he would prefer.

The motion carried with REPRESENTATIVE KEYSER voting no.

REGULAR SESSION

SENATE BILL 138

SENATOR MAZUREK explained this bill, which is an act to generally revise Montana's codification of the Uniform

Commercial Code by substantially adopting the 1972 and 1977 changes recommended by the Uniform Law commissioners. He indicated that they got a message to Ron Wyse, the University law professor who is versed in these Uniform Commercial Code provisions and he is not here this morning, so he would try to explain the bill the best he could.

BOB MURDO, representing the Business Law Section of the State Bar of Montana, clarified some of the changes in this bill.

MIKE ZIMMERMAN, representing the Business Law Section of the State Bar of Montana, gave testimony in support of this bill.

There were no further proponents and no opponents.

REPRESENTATIVE KEYSER asked what they were saying in section 71 on pages 126 and 127. SENATOR MAZUREK replied that the law defines what a fixture is; if it is attached to the realty and cannot be removed without damage thereto that is a fixture, such as plumbing fixtures, built-in kitchen equipment, etc.

CHAIRMAN BROWN asked on page 4, lines 7 through 10, why they have that in there. SENATOR MAZUREK replied that he thought that this deals with the proceeds and the purpose is to make sure that included with the definition of proceeds would be the production of an oil or gas well. He presented to the committee an explanation of the proposed amendments to the bill prepared by Professor Ron Wyse. See EXHIBIT A.

REPRESENTATIVE HANNAH noted that theses changes were recommended in 1972 and he wondered why this bill is coming in now. SENATOR MAZUREK replied that it is a uniform law-most of the other states around us generally have adopted these changes; you have businesses that deal across state lines and they need to be playing with the same rules.

REPRESENTATIVE KEYSER contended that this is not a real uniform law as they have some changes in the law that are really different. SENATOR MAZUREK responded that this is correct to a degree and there are some changes such as the agricultural change that was proposed as an option for the states to pick one or the other; and

Montana chose one option and they are stuck with it. He emphasized that, for the most part, it is uniform and he thought that Louisiana is the only state that has not adopted the Uniform Commercial Code.

REPRESENTATIVE CURTISS asked MR. MURDO if it was his opinion that Montana was at a disadvantage because of this lack of uniformity. He responded no, he thought they have uniform law along with the other states in the United States and the things that happen are a little different in Montana versus Wyoming, Idaho, North and South Dakota; those are 1972 amendments that they are talking about and some of those states have adopted those amendments; he did not think they were disadvantaged but, if they were Louisiana and did not have this law, they would be disadvantaged.

There were no further questions and the hearing on this bill was closed.

SENATOR MAZUREK indicated that REPRESENTATIVE RAMIREZ will carry this bill on the floor of the House.

SENATE BILL 237

SENATOR HALLIGAN, District 48, Missoula, stated that this bill provides a procedure for restitution to victims of crimes by the criminal offenders and a procedure upon default in payment of restitution; restitution is not a new conviction and is not a new sentence, but the supreme court about four months ago, dealing with a case wherein restitution was involved, indicated that there are no guidelines within the state of Montana in relation to restitution; so the supreme court suggested that the legislature look at the model corrections act and develop some model language that deals with the area of restitution; and that is exactly what this bill is. He explained some important areas in the bill.

REPRESENTATIVE ASAY, District 50, Forsyth, arose in support of this bill and said that, in visiting with a judge in his district, he indicated that there was definitely a need for a provision of the payment of restitution through

and he felt that many of the J.P. courts are filled more than the district courts and this will undoubtedly add to the J.P. courts; some of them are loaded far more than they want them to be loaded and they may be coming in for extra J.Ps.

REPRESENTATIVE IVERSON said that he liked the bill, but he has trouble with the $500.00 figure. He moved that the bill be amended on page 2, line 20, by inserting $300 in lieu of $500 and throughout the bill where it is appropriate. REPRESENTATIVE ADDY seconded the motion.

The motion carried with REPRESENTATIVE BERGENE, REPRESENTATIVE DAILY and REPRESENTATIVE HANNAH voting no.

REPRESENTATIVE ADDY moved that the bill BE CONCURRED IN AS AMENDED. REPRESENTATIVE JENSEN seconded the motion.

REPRESENTATIVE DAILY questioned on page 11, Section 9, which is existing law, if they killed this bill or tabled this bill, would all that language still be in the law. REPRESENTATIVE ADDY replied that that is right.

REPRESENTATIVE DAILY asked if the only thing the bill does is change the amount from $150.00 to $300.00, changes the 90 to 180 days and adds that section (v). REPRESENTATIVE ADDY responded in the affirmative.

The motion carried with 11 voting aye and 7 voting no. See ROLL CALL VOTE.

SENATE BILL 138

REPRESENTATIVE J. BROWN moved that the bill BE CONCURRED IN. REPRESENTATIVE DAILY seconded the motion.

CHAIRMAN BROWN noted that he checked the language on page 4 that he was concerned about and there is no problem with it.

REPRESENTATIVE HANNAH stated that he could not support the bill because most bills they get are single titled, single purposed and they get a chance to review that and a chance to talk about the pros and cons, they get a chance to hear

testimony and here they have a bill that is 160 pages that has multiple changes dealing with bringing the laws into uniform conformity with other states. He felt that this bill is not totally uniform with other states; it has been amended and changed; he felt they may be good changes; but he had not had the opportunity or the time to listen to the testimony on this; and for this reason, he cannot support the bill.

CHAIRMAN BROWN explained that the reason for this bill coming over farily late was that the Senate did spend an enormous amount of time on it; they had a two-hour work session with Professor Wise, going through it page by page, line by line, and he wanted to point out that at least one body had spent the time required. He indicated that Professor Wise is agreeable to spending the hours with us if we want him to do so.

REPRESENTATIVE HANNAH exclaimed that he has taken some very nice bills to the Senate and they have never seen the light of day.

There was no further discussion and the motion carried with REPRESENTATIVE KEYSER and REPRESENTATIVE HANNAH voting no.

SENATE BILL 194

REPRESENTATIVE FARRIS moved that the bill BE CONCURRED IN. REPRESENTATIVE JAN BROWN seconded the motion.

MS. DESMOND passed out some proposed amendments. See EXHIBIT C. She explained that she could not remember who requested the amendments, but there was some question about whether the clerk of the district court or the jury commissioner should be permitted or required to excuse jurors from the jury, and the feeling was it would be better to have that responsibility with the judge.

REPRESENTATIVE RAMIREZ informed the committee that he was the one that asked for these amendments; but he got very effectively lobbied on this, because he changed his mind; he talked to a couple clerks of the court; his concern was that the judges were not tough enough; they excused too many people; and the clerks of the court convinced him that they would be